



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 7016-03
29 October 2003

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed an application with this Board requesting that his record be corrected by removing a general court-martial order from his record.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 October 2003 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitation and review the application on its merits.

c. On 12 January 1996 Petitioner was found not guilty by a general court-martial (GCM). Since he was found not guilty, no reference to the court-martial should be filed in his record. On 1 April 1999 he was promoted to master sergeant (MSGT; E-8).

d. Petitioner states in his application that he has recently reviewed his record and found general court-martial order (GCMO) 62-96. That order reflects the charges and specification of which he was acquitted at the 12 January 1996 GCM. He is requesting that the order be removed from his record. The GCMO clearly shows that he was found not guilty on all

all charges.

e. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps that states, in part, as follows:

... this section recommends that the General Court-Martial order 62-96 should be removed from his record. However, since the document has been in his record since 1997 and has been seen by the promotion board, we recommended that the document in question be removed by board action rather than administratively in order to maintain a paper trail of the action.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since Petitioner was found not guilty, it is clear that GCMO 62-96 should not be filed in the record. Therefore, the Board agrees with the recommendation contained in the advisory opinion that it should be removed from Petitioner's record.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by removing all references to the general court-martial of 1996 including, but not necessarily limited to, general court-martial order 62-96.
- b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

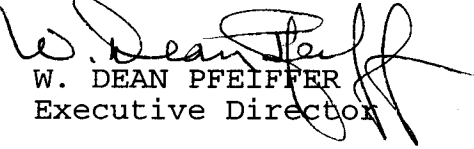
ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section

6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director